

NOT FOR PUBLICATION

FOR UPLOAD

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

United States of America,)	
)	
Plaintiff,)	Civ. No. 2001-31
)	
v.)	
)	
Robert L. King,)	
)	
Defendant.)	
)	

ATTORNEYS:

Kim L. Chisholm, AUSA, Esq.
St. Thomas, U.S.V.I.
For the plaintiff,

Robert L. King, Esq.
St. Thomas, U.S.V.I.
Pro se defendant

MEMORANDUM

Moore, J.

This matter comes on defendant Robert King's ["King" or "defendant"] motion to dismiss the government action for the collection of delinquent student loan repayments and the government's motions for summary judgment. For the reasons set forth below, I will deny the defendant's motion to dismiss and schedule a hearing on Friday, September 27, 2002, on the government's motion for summary judgment.¹

¹ In his opposition to the government's motion for summary judgment, King submitted several exhibits purporting to show that he has repaid his loans. The government questions these exhibits as actual proof of repayment. In the interest of justice, I will schedule a hearing to determine the issue of King's alleged repayment.

I. FACTUAL BACKGROUND

Between October 31, 1973 and September 1, 1976, King executed four promissory notes from Marine Midland Bank Central for a total loan value of \$8,550.² These notes were student loans in connection with the defendant's education at Utica College at Syracuse University. These loan obligations were guaranteed by the New York Higher Education Assistance Corporation ["NYHEAC"] and then reinsured by the Department of Education under loan guaranty programs authorized under Title IV-B of the Higher Education Act of 1965, 20 U.S.C. §§ 1071-1087-4.

According to the government, King defaulted on his loan obligations on June 25, 1978. After paying the holder of the note, NYHEAC unsuccessfully tried to collect the debt whereupon the Department of Education reimbursed NYHEAC pursuant to the reinsurance agreement and took assignment of the unpaid loans on July 11, 1994. The government instituted this action on February 6, 2001. King subsequently moved to dismiss the government's complaint on the ground that its action is barred by the six-year statute of limitation under 28 U.S.C. § 2415. The government opposed the defendant's motion and filed a motion for summary

² This total consisted of three loans for \$2,500 each and one loan for \$1,050.

judgment. This Court has federal jurisdiction under section 22(a) of the Revised Organic Act of 1954³ and 28 U.S.C. § 1331.

II. DISCUSSION

King bases his motion to dismiss solely on the ground that the government's action is time barred by a six-year statute of limitations. See 28 U.S.C. § 2415(a) ("[E]xcept as otherwise provided by Congress, every action for money damages brought by the United States . . . shall be barred unless the complaint is filed within six years after the right of action accrues"). Unfortunately for the defendant, Congress specifically eliminated the statute of limitations associated with the collection of Title IV-B student loans to prevent situations, such as this, where an individual attempts to wiggle himself out of repaying his student loans. Section 1091a of title 20 of the United States Code provides:

Notwithstanding any other provision of statute,
regulation, or administrative limitation, no limitation
shall terminate the period within which suit may be
filed, a judgment may be enforced, or an offset,
garnishment, or other action initiated or taken by --
. . .

³ 48 U.S.C. § 1612(a). The complete Revised Organic Act of 1954 is found at 48 U.S.C. §§ 1541-1645 (1995 & Supp.2001), reprinted in V.I. CODE ANN. 73-177, Historical Documents, Organic Acts, and U.S. Constitution (1995 & Supp.2001) (preceding V.I. CODE ANN. tit. 1).

(D) the Secretary, the Attorney General, or the administrative head of another Federal agency, as the case may be . . . for the repayment of the amount due from a borrower on a loan made under this title that has been assigned to the Secretary under this title.

20 U.S.C. § 1091a(a)(2). Therefore, as the government is not barred by any statute of limitations, I will deny the defendant's motion to dismiss the complaint.

III. CONCLUSION

Section 1091a eliminates any statute of limitations bar on the collection of student loan obligations. Therefore, as the government is not prohibited from collecting King's delinquent loan payments, I will deny the defendant's motion to dismiss the complaint. In addition, I will schedule a hearing for September 27, 2002, on the government's motion for summary judgment.

ENTERED this 19th day of September, 2002.

For the Court

_____/s/_____
Thomas K. Moore
District Judge

ATTEST:
WILFREDO MORALES
Clerk of the Court

By:_____/s/_____
Deputy Clerk

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St. Thomas, U.S.V.I.
Pro se defendant

ORDER

For the reasons set forth in the foregoing Memorandum of even date, it is hereby

ORDERED that the defendant's motion to dismiss the government's complaint (Docket No. 14) is **DENIED**; and it is further

ORDERED that the plaintiff's motion for summary judgment is set for hearing at 9:30 a.m., Friday, September 27, 2002.

ENTERED this 19th day of September, 2002.

For the Court

_____/s/_____
Thomas K. Moore
District Judge

ATTEST:
WILFREDO MORALES
Clerk of the Court

By: ____/s/_____
Deputy Clerk

cc: Hon. G.W. Barnard
Mrs. Jackson
Kim L. Chisholm, Esq.
Robert L. King, Esq.
Michael Hughes, Esq.